

VHA PRIVACY POLICY FY2006

If you have questions regarding issues related to Privacy Training, you may contact VA North Texas Health Care System (VANTHCS) Privacy Officer, Mr. Cliff Henry, at ext. 71320 or you may send him an e-mail message. For additional information on Privacy Training, you may complete the VA's web-based training program available on the Internet at <http://www.privacytraining.med.va.gov/> . If you take the web-based training be sure to print the certificate of completion. To receive credit you should present the certificate to your supervisor or your service's Administrative Officer.

- 1) There are six statutes (laws) that VA employees, contractors, students and volunteers should be aware of when applying VHA policy to Privacy and Release of Information. They are as follows:
 1. The Freedom of Information Act (FOIA), 5 USC 552
 2. The Privacy Act (PA), 5 USC 552a
 3. The VA Claims Confidentiality Statute, 38 USC 5701
 4. Confidentiality of Drug Abuse, Alcoholism and Alcohol Abuse, Infection With the Human Immunodeficiency Virus (HIV), and Sickle Cell Anemia Medical Records, 38 USC 7332
 5. The Health Insurance Portability and Accountability Act (HIPAA)
 6. Confidentiality of Healthcare Quality Assurance Review Records, 38 USC 5705
- 2) The Privacy Act provides for the confidentiality (or privacy) of certain information about patients that can be individually identified.
- 3) All Veterans Health Administration (VHA) employees have to follow all federal laws, regulations and VHA policies governing privacy matters. However, VHA employees can use confidential (private) health information in the official performance of their duties. VHA employees can release individually identifiable information (information that can be directly connected to a specific person) only when prior written permission by the individual (patient) has been obtained or when other legal authority permits it.
- 4) Health care facilities must follow all the privacy laws like the Privacy Act and HIPAA. The result will be the strict attention to all uses and/or releases of information and in order to ensure the rights of the individual.

- 5) All Veterans Health Administration (VHA) employees may use information contained in VHA records, when there is a need for the information to do their job for treatment, payment, and/or health care operations purposes. All VHA employees should only access a record on a need to know basis. (If there is a need to know the information to do a job, it is OK. If there is not a need for specific information to do your job, then do not look at the record.)
- 6) The Privacy Act and HIPAA (Health Insurance Portability and Accountability Act) have given the following rights to all patients:
1. A veteran has a right to a copy of his/her own medical record.
 2. A veteran has a right to request a change to any information in his/her record.
 3. A veteran has the right to request a list of every time information (written or oral) has been released from his/her records.
 4. VHA facilities and programs are required to keep an accurate record of each time an individual's record is looked at by any person or outside agency.
 5. A veteran has the right to request VHA to limit its use or release of individually identifiable information.
 6. The personal representative of the deceased (Executor of the Estate) has the same rights as the deceased individual.
- 7) The Privacy Act and HIPAA give patients the right to have a copy of his/her medical records and the right to request changes to those records if necessary. To obtain copies, the patient must make a request in writing. The written request must be reviewed by the Facility Privacy Officer, who will verify the identity of the requester and determine what access is appropriate.
- 8) The Privacy Act and HIPAA allow patients to ask for a change to information in their records. The request must be made in writing and must describe the information believed to be inaccurate or incomplete.
- 9) The Privacy Act and HIPAA give the right to patients both to request copies of medical records and to request that changes be made to a medical record. These must be requested in writing, but patients do not have to state a reason for wanting the copy or the change.
- 10) The VHA handbook has rules about giving information about a specific person from VHA records to VA. This may be done without written permission from the veteran. All questions about giving out information should be referred to the Facility Privacy Officer.

- 11) The VANTHCS Facility Privacy Officer is an employee of the Medical Administration Service (MAS). The Facility Privacy Officer is responsible for oversight of privacy issues.
- 12) Individually identifiable information (information that can be connected to a single person) can be used by VHA employees on a need to know basis in the performance of their official duties for the purposes of treatment, payment and/or healthcare operations without written permission from the patient.
- 13) Veterans Health Administration (VHA) may release or share information about a specific person on a need to know basis without the written permission of the individual for the purposes of treatment, payment and/or healthcare operations. This information may not include psychotherapy notes. VHA may release individually identifiable information, but not health information, without the written consent of the patient to any component of VHA that needs this information for the purpose of fulfilling the agency's mission.
- 14) VA Medical Center employees cannot provide a spouse with a copy of a medical record without the signed written permission of the veteran (except in rare circumstances). The spouse may be referred to the Release of Information (ROI) Unit to obtain more information on how to obtain a copy of the spouse's medical record and to confirm that other authority (for example, Power of Attorney) is not present.
- 15) A valid written permission should include the following:
 1. Exactly what information is needed
 2. Full identification of the individual whose information is being requested
 3. An expiration date or event
 4. The signature of the person permitting the disclosure of
- 16) Anyone may request Veterans Health Administration (VHA) to disclose any record. However, even the Department of Defense (DOD) must have the written permission of the veteran, or must be referred to the Facility Privacy Officer to determine if other legal authority permits the release of the requested information.
- 17) Veterans Health Administration (VHA) may disclose limited individually identifiable information to a law enforcement agency for the purpose of locating criminals. The law enforcement agency must make a written request.

18) Before releasing individually identifiable information (including health information) to an outside person or agency, a Veterans Health Administration (VHA) employee should determine the type of information involved and whether legal authority exists under the laws and regulations to release the information.

19) Sending individually identifiable health information to health care organizations, other medical professionals or a person requires using properly completed release forms. Only under medical emergency situations may Veterans Health Administration (VHA) fax individually identifiable health information to someone outside of VHA. E-mail messages must NOT contain individually identifiable health information unless secure methods are used.

20) The Freedom of Information Act (FOIA) requires release of VA records, or any reasonable portion of a record, to any person upon written request. Any request for records received at Veterans Administration North Texas Health Care System (VANTHCS) must be promptly referred to the facility's FOIA Officer for action. The requester must be notified in writing within 20 workdays after the receipt of the request whether the request will be granted or denied.

It is the general policy of VANTHCS to release information from department records to the maximum extent permitted by law. There are circumstances, however, when a record should not or cannot be released in response to an FOIA request. Any request must be reviewed, on a line-by-line basis, prior to release to determine what information may be released or withheld.

Records of information usually furnished to the public in the regular course of the performance of official duties may be furnished without a written consent. A request for access to official records under the FOIA must be in writing over the signature of the requester and reasonably describe the records so they may be located.

21) A requester must submit a written request for information under the Freedom of Information Act and must pay copying fees. Veterans Health Administration (VHA) must notify the requester within 20 working days whether their request is granted or denied. If the request is denied, the requester may appeal this decision to General Counsel. With certification of a "compelling need" a FOIA requester may make a request for quicker processing. Material must be reviewed line-by-line to determine what may or may not be released.

22) Health information that relates to drug abuse, alcoholism, HIV, or sickle cell anemia may be released only if the written permission from the patient clearly covers this information (according to Title 38 United States Code, Section 7332).